Bail Slip

The Appellant/Accused viz., Sundaramoorthy, was directed to be released on bail as per the order of this Court dated 8.12.2003 and made in Crl.M.P.No.11274/03.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-08-2006

CORAM:

THE HONOURABLE MR.JUSTICE M.KARPAGA VINAYAGAM

AND

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 1708 of 2003

Sundaramoorthy ..Appellant

-vs-

State rep. by
Inspector of Police
Jolarpet Police Station
Vellore District
(Crime No.421/2001) .. Respondent

This appeal has been filed under Section 374 Cr.P.C against the Judgment made in S.C.No.82 of 2002 dated 30.9.2003 on the file of the Additional Sessions Judge(Fast Track Court), Thirupathur.

For appellant : : Mr.D.Rajagopal
For respondent : : Mr.V.R.Balasubramanian-G.A.

JUDGMENT

(Judgment of the Court was delivered by A.C.ARUMUGAPERUMAL ADITYAN,J)

This appeal has been filed against the Judgment in S.C.No.82 of 2002 on the file of Additional Sessions Judge(Fast Track Court) Tirupathur.

2. According to the prosecution, on 20.6.2001 at about 2.00p.m., while the deceased Sriramulu was asleep, the accused Sundaramoorthy had caused the death of the said Sriramulu with a piece of towel causing suffocation due to previous enmity in connection with the purchase of a pair of bulls from P.W.9 Arumugam to the accused for Rs.7,200/-,some two months prior to the date of occurrence. The accused had paid Rs.500/- only and the balance amount of Rs.6,700/- is to be paid to P.W.9. Since

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the above said transaction was arranged by the accused, he was often reminding the accused to pay the balance of the amount for the above said purchase of a pair of bull to P.W.9, the accused had developed a grudge which resulted in the murder of the deceased on 20.6.2001 at 2.00p.m., The complaint was preferred by P.W.1, who had seen the dead body of the deceased in the well of his land. P.W.1 could not identify the dead body and he had preferred ExP1 complaint to P.W.17 who had registered a case under Crime NO.421/2001 under Section 174 Cr.P.C.. The entire case of the prosecution rests on the last seen theory put forward by P.W.5, the wife of the deceased, who would depose that her husband/deceased was demanding the accused to pay the balance of consideration due to P.W9, in connection with the purchase of a pair of bulls and that the accused took P.W.5's husband(the deceased) on 18.6.2001 at 10.00 am., from the house but her husband did not return. On seeing the dead body of her husband in the photo published in the newspaper on 23.06.2001, she preferred Ex P3 complaint with Santhavassal police station. The evidence of P.W.6, son of the deceased and P.W.7, brother of P.W.1 have also corroborated with the evidence of P.W.5. P.W.8, Mannammal was also examined to show that she had seen the deceased in a bus proceeding to Vellore, in which, she also travelled with them and that on enquiry, she was told that they were going to purchase a pair of bulls. P.W.16 has also deposed to the fact that he had seen the accused and the deceased together at Kudiyankuppam village and gave accommodation and food at his residence and after 1 ½ months , the accused alone came to him and confessed that he had murdered the deceased. P.W.12 is the head Constable of Santhavassal Police station who had registered the complaint preferred by P.W.5 in Cr.No. 166/2001 on 23.6.2001 at 8.00p.m.,. The investigation was conducted by P.W.19, who had altered the Section from Section 174 Cr.P.C. to Section 302 IPC,after P.W.5 identified the body. On 23.6.2001, he had visited the place of occurrence, prepared observation mahazar, had drawn rough sketch, examined the witnesses, and arrested the accused. The accused had given a confession statement before P.W.13, Kaliappan, Village Administrative Officer at 3.30p.m., who had handed over the accused to the police. The accused has also given earlier confession statement before P.W.15 and P.W.16, who have advised him to surrender before the Village Administrative Officer. P.W.20,is the Doctor, who had conducted autopsy and filed Ex P11 postmortem certificate. After observing all the formalities, P.W.19, the Inspector of Police has filed charge sheet. The charge sheet was taken on file by the learned Judicial Magistrate No.I,Thirupathur under P.R.C.12/2001 . The learned Judicial Magistrate had furnished the copies to the accused under Section 207 Cr.P.C. and since the case is triable by Court of Sessions, the learned Judicial Magistrate had committed the case to the Court of Sessions under Section 209 Cr.P.C. . The learned Additional Sessions Judge(Fast Track Court) Tiruppathur had framed charges under Sections 302 IPC and 201 IPC against the accused and when questioned the accused pleaded not guilty.

3. Before the trial Court, P.Ws 1 to 20 were examined. Exs. P1 to P.12 and M.O.1 to M.O.6 were marked.

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4. When the incriminating circumstances were put to the accused, he totally denied his complicity with the crime. On the basis of oral and documentary evidence, the learned Additional Sessions Judge(Fast Track Court), Tiruppathur has found the accused guilty and convicted under Sections 302 IPC and 201 IPC and sentenced to undergo life imprisonment. Aggrieved by the findings of the learned Additional Sessions Judge(Fast Track Court) Tiruppathur, the accused has preferred this appeal.

5. Now the point for consideration in this appeal is Whether the guilt under Sections 302 IPC and 201 IPC has been proved beyond any reasonable out to warrant conviction under the above said Sections of law?

6. We have heard Mr. D.Rajagopal, the learned counsel for the appellant and Mr.V.R.Balsubramanian, the learned Government Advocate for the respondent. We have carefully considered their submissions

7. The point:
The entire case of the prosecution hinges upon the circumstantial evidence. P.W.5 is the wife of the deceased, P.W.6 is the son of the deceased and P.W.7 is the brother of P.W.1 have stated that the deceased had left the house on 18.6.2001 at about 10.00a.m., along with the accused. Ex P3 is the complaint preferred by P.W.5. In ExP3, there is no allegation by P.W.5 against the accused. If there was any enmity prevailed prior to 18.6.2001, in connection with the purchase of a pair of bulls from P.W.9 and repayment of the money by the accused to P.W.9, between the accused and the deceased, the said fact would have been mentioned by the deceased wife Kuppammal, P.W.5 in her complaint Ex P3. There is no whisper about prevailing of any grudge between the accused and the deceased in connection with the payment of the money for the purchase of a pair of bulls to the accused from P.W.9 Arumugam. Under such circumstances, even though the last seen theory is spoken to by P.W.5, P.W.6 and P.W.7, they have not deposed about the previous enmity between the accused and the deceased. If the deceased was in an inimical terms with the accused, he would not have gone with the accused on 18.6.2001. The prosecution relies on the extra judicial confession of the accused before P.W.15 and P.W.16. P.W.15, Dhanasekaran would depose to the fact that the accused came and confessed before him, 20 days after P.W.5 Kuppammal preferred the complaint(23.6.2001). According to him, the accused, had confessed before him that he had pushed the deceased into the well. But the conduct of P.W.15, thereafter is unbelievable because P.W.15 would say that he simply advised the accused to go and surrender before the police. P.W.16, in his evidence would depose that the accused is distantly related to him and some two years prior to the date of deposition(7.5.2003), he came to his (P.W.16) house along with another person and stayed in his house and informed that they came to purchase a pair of bulls and that they had their dinner and slept in his house and the very next day, they got up and left his house and 1 ½ months

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thereafter, the accused came and informed him that he has murdered the person who accompanied him, the other day and that he advised him to surrender before the Village Administrative Officer. The evidence of P.W.16 is also highly doubtful because P.W.16 is working in the Railways and after coming to know that the accused had committed murder, naturally, he would have produced him before the police. But he has not done so. The other piece of evidence on which the prosecution relies on is the evidence of P.W.13. P.W.13, is the then Village Administrative Officer of Kudiyankuppam Village. The confession before him was recorded, some 42 days after the date occurrence. The occurrence, according to the prosecution had taken place on 18.6.2001 and the extra judicial confession statement before P.W.13 was recorded on 30.7.2001 at 3.30p.m.,

8. The learned counsel appearing for the appellant relying on the decision reported in Kailash-vs-State of U.P.(AIR 1994 Supreme Court,470) would contend that an extra-judicial confession of the accused, after a lapse of 20 days from the date of occurrence is considered to be highly untrustworthy. The facts of the said case are that the occurrence had taken place on the intervening night of 26th and 27th April 1973. According to the prosecution on 15th May 1973, the Investigating Officer came to know that the accused had approached P.W.10 and had made a confession. He rushed to the house of P.W.10 and after enquiry, he searched for the accused and found him to be absconding and he was arrested on 16th May 2003 and at his instance a Gandasa was recovered and the clothes worn by him at the time of occurrence were also seized. The case rests entirely on the circumstantial evidence and one of the circumstances relied on by the prosecution was that the accused made extra-judicial confession of his guilt before P.W10 on 15.5.1973. While discarding the above said extra-judicial confession as highly untrustworthy,the Honourable Apex Court has held as follows:

> " We have carefully gone through the evidence of P.W.10. We find that the same does not inspire confidence. It is also stated by this witness that the accused, might have opposed his brother in the elections. Be that as it may, we do not find any reason as to why the accused after 20 days should go to P.W.10 who himself is an accused in another case and make a confession. The suggestion made by the defence that P.W.10 was deposing at the instance of police is not without force. This circumstance is of doubtful nature and if this circumstance is not to be taken into consideration,then on the basis of other circumstances even if they are accepted, the case against the accused does not stand established. In the case of circumstantial evidence all the circumstances should be established by independent evidence and they should form a complete chain bringing home the guilt to the accused without giving room to any other hypothesis."

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The above facts of the case squarely applies to the present facts of the case. Herein also, the extra-judicial confession by the accused to P.W.13 was made 42 days after the date of occurrence, which is highly untrustworthy.

9. Yet another ratio decidenti relied on by the learned counsel appearing for the appellant is State of Haryana-vs- Ved Prakash(AIR 1994 Supreme Court,468) wherein it has been held by the Honourable Apex Court that an extra-judicial confession to a total stranger is insufficient to establish the offence. According to P.W.5, both the accused and the deceased belong to Kakranandal Village. According to prosecution, the accused had given extra-judicial confession before P.W.13, who is the then Village Administrative Officer of Kudiyankuppam Village, who is not familiar to the accused before. Under such circumstances, it has been held in the above said dictum that the extra-judicial confession by an accused to a stranger is insufficient to establish the offence. The exact observation in the above said case runs as follows:

> " We fully concur with the finding of the High Court in relation to extra-judicial confession. First and foremost P.W.31, Dr. Rajkumar, had not seen the accused earlier nor did the accused know P.W.31 earlier. Therefore, it sounds strange that the accused could have made an extra- judicial confession that too in the presence of P.W.31 Lal Chand when both of them were strangers to the accused. It is equally surprising that Doctor kept ready a tape recorder anticipating his confession. It is clear this is an evidence brought out by influence; may be perhaps when the accused was in police custody. The medical evidence also does not support the extra-judicial confession when the Doctors and the post mortem examination could not fix the cause of death".

On the basis of the extra-Judicial confession, ExP5 nothing was recovered. Both P.W.15 and P.W.16 were examined by the police only on 2.8.2001. Yet another important point to be noted in this case is P.W.16, the person who had lastly seen the deceased along with the accused. But P.W.16 has not identified the dead body. According to P.W5, the accused and the deceased belong to Kakranandal Village. But the accused has given extra-judicial confession before P.W.13, who is the Village Administrate Officer of Kudiyankulam Village. The last seen theory of P.W.15, P.W.16 has been denied by the investigation officer P.W.19, in his cross examination to the effect that they have not stated that they have seen the accused along with the deceased as spoken to by them before the Court. Further the medical evidence of P.W.20, the doctor would go to show that during autopsy, the doctor would see multiple injuries on the body of the deceased and the doctor has opined that the death has caused due to asphyxia and also due to multiple injuries. In Ex P12, post mortem

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certificate, it has been stated that both lungs of the deceased were congested with water. In the cross examination, P.W.20, the doctor has admitted that if the person is pushed into the water in a well, in an unconscious stage, there is no possibility for the water to enter into the nose or mouth. So the case of the prosecution that the body of the deceased was put into the well, after his death, cannot also be believable because of the above said medical evidence, since there is no possibility for the water to enter into the lungs, if the deceased was put into the well, after his death.

10. So the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. Certainly, the benefit shall go to the accused. We are constrained to hold that the guilt against the accused under Sections 302 IPC and 201 IPC are not proved for the reasons indicated above. The point is answered accordingly.

11.In the result, this appeal is allowed and the conviction and sentence imposed against the appellant/accused is set aside and he is acquitted of all the charges. The bail bond stands cancelled. The fine amount , if any, paid shall be refunded to the appellant/accused.

sg

Sd/
Asst.Registrar

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Sub Asst.Registrar

To
1. The Additional Sessions Judge(Fast Track Court),Tirupathur, Vellore
2. -Do-Thro' The Principal District and Sessions Judge, Vellore.
3. The Judicial Magistrate No.1, Thiruppathur
4. The Judicial Magistrate NO. 1, Tirupathur, through the Chief Judicial Magistrate, Vellore.
5. The Inspector of Police,Jolarpet Police Station, Vellore,Cr.No.421/2001)
6. The Superintendent of Central Prison, Vellore.
7. The Public Prosecutor, High Court, Madras-104
8 The District Collector, Vellore.
9. The Director General of Police, Mylapore, Madras

1 cc To Mr.D.Rajagopal, Advocate, SR.37073.

Crl.A.No.1708/2003

JRG(CO)
RVL 24.08.2006

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